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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. ___

IN THE SUPREME COURT OF
THE UNITED STATES

DELLA SULLINS,
Petitioner

v.

ANTHONY T. LEE, et al.,
Plaintiffs-Respondents

UNITED STATES OF AMERICA,
Plaintiff-Intervenor Respondent

v.

MACON COUNTY BOARD OF EDUCATION, et al.,
Defendants-Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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15 pgs

## QUESTIONS PRESENTED

Whether an individual that filed or participated in a class action lawsuit in 1963 as "next friend" and parents of their minor children has standing to appeal the decision of a District Court Judge entered in 2001 concerning the enforcement of a School Desegregation Plan entered as a result of said class action suit.

## CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

The following persons and entities have an interest in the outcome of this action:

Alabama State Department of Education
Anniston City Board of Education
City of Anniston
Bishop, Colvin, Johnson & Kent
Gray, Langford, Sapp, McGowan, Gray
Anita Kelly
Burgin H. Kent
Anthony T. Lee
Pauline Miller
National Education Association, Inc.
Ernestine Sapp
James M. Sims
Honorable C. Lynwood Smith, Jr.
C. David Stubbs
Della Sullins
United States Department of Justice
United States of America

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## I. OPINIONS BELOW

The Opinion of the Court of Appeals, the judgement of which is sought in this petition to be reviewed is from an order dismissing an appeal, a copy of the order is reprinted in the appendix.

## II. STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on February 12, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. § 2101(c).

## III. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES, AND REGULATIONS INVOLVED.

None.

## IV. STATEMENT OF THE CASE

In 1963, a lawsuit was filed by Fred D. Gray who represented several plaintiffs who were "Negro children suing through their parents as next friends, against the Board of Education of Macon County, Alabama, its individual members, agents, representatives, employees and successors in office and against the superintendent of schools of Macon County, Alabama." Lee v. Macon County Board of Education, 221 F.Supp. 297, 298 (M.D. Ala. 1963). Della Sullins was the mother of three of the children named as plaintiffs in this class action lawsuit. The United States was made a party to this proceeding in about July 1963. Judge Frank M. Johnson entered an

order in 1963 which stated in part as follows:

> "This Court finds that these plaintiffs are Negro children, living and residing in various areas of Macon County, Alabama, that said plaintiffs are authorized by law to bring and maintain this action, and that the plaintiffs represent a class and are authorized to sue in behalf of other members of their class, since there are common questions of fact and law arising out of circumstances that are common to these plaintiffs and other members of their class."
>
> Lee v. Macon, 221 F.Supp. 297, 298

Judge Johnson entered an order enjoining the Superintendent and Board of Education of Macon County, Alabama from operating a compulsory bi-racial school system. In February 1964, the Lee plaintiffs amended and supplemented their complaint by adding the Alabama State Board of Education, the State Superintendent of Education, and Governor George C. Wallace as additional defendants. A hearing was held before a three-judge district court panel which resulted in, among other things, a preliminary injunction being entered against all defendants, enjoining them from "preventing or attempting to prevent, or obstructing or interfering in any way with the Macon County Board of Education or any of the city or county boards of education throughout the State of Alabama in their compliance with the orders of the Federal courts requiring the elimination of racial discrimination in the Alabama

public school system." Lee v. Macon, 231 F.Supp. 743, 758 (M.D. Ala. 1964).

In 1967, the three-judge panel, in finding that the defendant state officials had engaged in a wide range of activities to maintain segregated public education throughout the state of Alabama, stated:

> "This Court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform state-wide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate, and to require these defendants to implement it."
>
> Lee v. Macon County, 267 F.Supp. 458, 478 (M.D. Ala. 1967)

The order further required the State Superintendent of Education to notify numerous enumerated school systems, including Anniston "that they are required to adopt a desegregation plan for all grades commencing with the 1967-68 school year that meets the standards embodied in the plan attached to this decree." 267 F.Supp. 458, 482. The United States Supreme Court affirmed the decision of the three-judge panel in Wallace v. U.S., 88 S.Ct. 415, 389 U.S. 215, 19 L.Ed2d 422 (1967).

The City of Anniston's School System was added as a defendant on July 15, 1969. Lee v. Macon County, 429 F.2d 1218, 1219 (5th Cir. 1970). "An evidentiary hearing was held in the Anniston case on

March 6, 1970 by the three-judge District Court ... resulting in an order of that court on March 16, 1970 (modified March 23, 1970) approving a plan of desegregation for the School System." 429 F.2d 1218, 1219. "By order, dated March 31, 1970, the three-judge District Court transferred the Anniston ... case, as well as a large number of other school cases in Alabama ... to the United States District Court for the Northern District of Alabama." 429 F.2d 1218, 1219.

The Anniston case has proceeded through the years with contested matters and various consent decrees. The private plaintiffs have been represented by the Gray, Langford firm and its former members for almost forty years.

The most recent relevant underlying trial court proceedings that led to this appeal are set out below.

On March 26, 2001, the Anniston City Board of Education (hereinafter referred to as "Board") filed a petition seeking court approval to close Norwood Elementary School and actions pertinent thereto. On March 27, 2001, the District Court entered an order directing all parties to respond to the petition by April 30, 2001, and further directed the parties to respond to a letter and petition which a parent named June Stanley filed with the Court on March 8, 2001. On June 14, 2001, the District Court entered an order setting a hearing on July 9, 2001 to hear evidence on the impact of closing Norwood Elementary School. The Court set a cut off date of July 6, 2001 for anyone interested to file written objections to the closing of Norwood Elementary School.

The Court held an evidentiary hearing on July

9, 2001 where the Board set forth the reasons for closing Norwood Elementary School. The Court allowed several individuals who were not parties to voice their objection to the closing of Norwood Elementary School. On July 12, 2001, the Court entered an order which, among other rulings, authorized the Board to close Norwood Elementary School effective with the 2001-2002 school year.

Della Sullins, filed a notice of appeal on August 16, 2001. The Board filed a motion to dismiss the appeal on October 3, 2001. Ms. Sullins filed opposition to the Board's motion to dismiss on October 18, 2001. On October 30, 2001, the Court entered an order requiring submission of briefs on the issue of standing. On February 12, 2001, the Court dismissed the appeal for lack of standing.

## V. REASONS FOR GRANTING THE WRIT

Ms. Sullins was a plaintiff in the original Lee v. Macon County Board of Education case filed in 1963, in her capacity as parent and next friend of her minor children. The plaintiff through her appeal is not attempting to demean the representation by Ms. Ernestine Sapp's law firm over the last 40 years. However, the representation created for the expediency and efficiency of the Lee v. Macon case in 1963 is no longer fair or effective.

In 1963, it might have been appropriate to rest the interests of all of the Negro children of the state in a singular representation to be advocated by a single firm. In reality, the singular representation has

transformed into a monolithic representation where the interests of all the Negro school children in Alabama are at the mercy of a single firms' discretion, judgment and integrity.

Again, without denigrating the effort of Ms. Sapp or her firm, the modern complexities, circumstances and eccentricities of any particular school board do not lend themselves to a broad generic analysis by a single firm. The analysis of whether an action by a school board acts to re-establish segregation is an analysis fraught with circumstances, particularities and nuances that are particularly local in flavor. The input of the local parents and community organizations is critical to ferret out motives and hidden agendas that fly below the radar screen of a broad analysis. The monolithic representation of Ms. Sapp's firm robs the local parents of meaningful input into the court's analysis of School Board action.

Ms. Sullins, as a plaintiff, appeals the current decision because the local circumstances, particularities and nuances, pertinent to the determination of the effect of closing Norwood School on desegregation, have not been fully explored. The original plaintiff's in Lee v. Macon have effectively become isolated from the analysis of whether actions by a particular school board re-establishes segregation. The local parents in Anniston have been isolated from the decision of whether actions by their school board re-establishes segregation.

The District Court's review of the Anniston School Board actions is a direct result of the original

lawsuit. The review is essentially a process dictated by a case that is "frozen in time". The interests of the Negro children, as expressed in 1963 through the class action lawsuit, are still the driving forces behind the current review process. The class that the original plaintiff's represented is in constant flux as Negro children enter and graduate from the school systems across the state.

In a practical sense, there can be no substitution of parties as advocated by the defendant. The nature of the lawsuit dictates that the original plaintiffs symbolically represent the class of Negro children in a perpetual manner. Symbolically, the parents that brought the suit on behalf of their children are still plaintiffs in that action. Symbolically, the original children named in the lawsuit are still plaintiffs in this action.

If the court were to hold that Ms. Sullins did not have standing then the court would have to use that same line of reasoning to hold that the original children named in the lawsuit are no longer have standing. The original children are themselves middle-aged adults by this time. If Ms. Sullins nor the original children have standing in this matter then the class of children that are effected by the current Anniston School Board actions are not represented by any plaintiffs. The current class of children are only represented by the law firm. I do not believe that the Court's intent in establishing the original desegregation plan was to rest all the interest of school aged Negro children across Alabama in one law firm without the balancing input of plaintiffs. A

law firm with noble intentions, but without a mandate from the local parents who are most directly affected by the Anniston School Board, cannot provide adequate representation.

The phrase "real party in interest" has no viable meaning or application within the context of the original lawsuit and its progeny. The unusual nature of this lawsuit, specifically that it spans nearly 40 years, dictates that the "real party in interest" are the original plaintiffs at the time of the original filing, including Ms. Sullins in her capacity as parent and next friend of her minor children.

The Appellee argues that Ms. Sullins did not file an objection to the Board's petition or otherwise appear to oppose the petition. The defendant's statements are rooted in the monolithic representation that I previously discussed. Ms. Sullins, as a plaintiff in the original lawsuit, was never informed about the proceedings regarding the Board's petition. As I have argued above, the law firm is a monolithic representative entity with no connection to the original plaintiffs in the lawsuit. The firm is not accountable to the original plaintiffs. The firm is only accountable and guided by their own integrity and sense of justice. However, I argue that it is fundamentally unfair to the local parents that the sole advocate of the current class of school aged Negro children is not also accountable to the parents of those children.

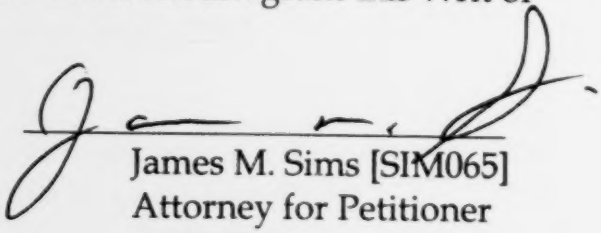
The Appellee argues that intervention is the appropriate way for Anniston parents to oppose their petition. However, Anniston parents initially

believed that their interest would be represented by the law firm of the original plaintiffs. However, no attempt was made by Mr. Sapp to contact, discuss or review the petition with local parents before the Court decision to close Norwood School. The local parents,therefore, had no opportunity to intervene. That is why Ms. Sullins, as a representative of the original plaintiffs, sought to appeal the decision.

## VI. CONCLUSION

Ms. Sullins had retained standing to represent the class of Negro children. She can fairly and adequately present the interest of the class. If Ms. Sullins is not allowed to pursue her appeal, the class of Negro children is without representation in regards to the closing of Norwood School.

Therefore, the Court should grant this Writ of Certiorari.



James M. Sims [SIM065]
Attorney for Petitioner
Della Sullins

## VII. APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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No. 01-14811 BB

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DELLA SULLINS,

Plaintiff- Appellant

UNITED STATES OF AMERICA,

Plaintiff-Intevenor, Amicus Curie,

versus

ANNISTON COUNTY SCHOOL SYSTEM,
MACON COUNTY BOARD OF EDUCATION ET AL.,

Defendants-Appellees

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On Appeal from the United States District Court For the Northern District of Alabama

BEFORE: ANDERSON, Chief Judge, TJOFLAT AND DUBINA, Circuit Judges.

BY THE COURT:

Appellee, Anniston City Schools Systems' motion to dismiss this appeal for lack of standing is granted